

MOTION FILED

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No. 97-1217

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In The  
**Supreme Court of the United States**  
October Term, 1997

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STATE OF NEW MEXICO ex rel MANUEL ORTIZ,  
*Petitioner,*

v.

TIMOTHY REED,  
*Respondent.*

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**MOTION FOR LEAVE TO FILE AMICUS CURIAE  
BRIEF AND AMICUS CURIAE BRIEF IN  
SUPPORT OF PETITIONER STATE OF NEW MEXICO**

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**MOTION FOR LEAVE TO FILE AMICUS CURIAE  
BRIEF IN SUPPORT OF PETITIONER NEW MEXICO'S  
PETITION FOR WRIT OF CERTIORARI**

Amicus National Association of Extradition Officials, by and through undersigned counsel and pursuant to Rule 37(2) of the Rules of the Supreme Court, moves for permission to file an amicus curiae brief in the above-styled cause. Amicus Association would show this Court as follows:

1. Amicus National Association of Extradition Officials is an organization of cooperating states formed to provide an organization to promote the uniform application of extradition and related rendition statutes and insure the integrity of the extradition process. The Association's membership includes all fifty states, District of Columbia, Puerto Rico and Virgin Islands.

2. Amicus Association's membership will be adversely affected if the lower court's decision is allowed to stand, in that the mandatory extradition procedures will be rendered a nullity. The lower court's decision will create obstacles which will frustrate, if not entirely impede, the extradition process in direct conflict with the prior decisions of this Court.

3. Petitioner State of New Mexico, through counsel of record Elizabeth Blaisdell consents to the filing of this amicus.

4. Respondent Reed, through his counsel Steve Looney, objects to the filing of this amicus.

5. The amicus brief accompanies this motion pursuant to Rule 37(2)(b) of the Rules of the Supreme Court.

6. It is acknowledged that such motions are discouraged. However, this case is of vital importance to the member states necessitating this motion.

Respectfully submitted,

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# AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER STATE OF NEW MEXICO

Amicus National Association of Extradition Officials submits this amicus brief in support of Petitioner State of New Mexico.

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## STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus National Association of Extradition Officials<sup>1</sup> writes to urge this Court to grant the Petition for Writ of Certiorari of the State of New Mexico in this case. Amicus National Association of Extradition Officials is an organization of cooperating states formed thirty-four years ago to provide an organization to promote the uniform application of the Uniform Criminal Extradition Act and other rendition statutes. The Association's membership includes all 50 states, District of Columbia, Puerto Rico and the Virgin Islands.

The outcome of this case could have a significant impact on the Amicus Association's member states' fundamental right to secure the interstate extradition of a fugitive from justice as mandated by the United States Constitution, the Uniform Criminal Extradition Act and precedence of this Court. The concerns of the member states include the potential inability to extradite and try

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<sup>1</sup> Petitioner has consented to the filing of this brief, while Respondent has objected. Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *Amicus Curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.



one accused of a crime or assure completion of a sentence which has been imposed in accordance with the law. Additional concerns include the exercise of authority by a court in an asylum state beyond the authority given by the United States Constitution as announced by the United States Supreme Court in *Michigan v. Duran*, 439 U.S. 282 (1978), and the potential for a member state to unwittingly become a harbor for fugitives from other states frustrating the extradition process and ignoring its mandatory nature.

The decision of the New Mexico State Supreme Court, if allowed to stand, would set precedent which would violate each of these concerns. Moreover, the provisions of the United States Constitution, the Uniform Criminal Extradition Act and the intent of those provisions to mandate extradition as noted in *Puerto Rico v. Branstad*, 483 U.S. 219 (1987), would be left in disarray. The amicus Association has an interest in urging this Court to reverse the decision of the lower court to insure the integrity of the extradition process.

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#### REASONS FOR GRANTING THE WRIT

The petition for writ of certiorari should be granted because the decision of the New Mexico Supreme Court is contrary to the well-established decisions and mandates of this Court and the plain language of the Extradition Clause. Moreover, the New Mexico decision threatens to create insurmountable obstructions to attempts by member states of amicus Association to secure the return of their fugitives from justice.

#### I.

#### THE LOWER COURT IMPERMISSIBLY EXCEEDED THE AUTHORITY OF THE ASYLUM STATE IN DETERMINING THE FUGITIVITY STATUS OF AN ACCUSED IN AN EXTRADITION PROCEEDING.

Respondent Reed was paroled from the Ohio Correctional system in 1992. In 1993, an application was filed by Ohio prison officials to revoke Mr. Reed's parole status. Instead of appearing at his parole officer's office, Mr. Reed fled Ohio and was later arrested in New Mexico on a fugitive from justice charge. The State of Ohio sought extradition and the governor of New Mexico issued a warrant on Foreign Requisition directing the extradition of Mr. Reed.

In his habeas challenge to the extradition, Mr. Reed contended that he left Ohio under duress and was, therefore, not a fugitive from justice. Mr. Reed provided testimony at his habeas hearing that he was in fear for his life should he be returned to prison in Ohio. The New Mexico district court found, and the New Mexico Supreme Court agreed, that Mr. Reed was not subject to extradition concluding that he was not a fugitive from justice due to the fact that he left Ohio under duress and in fear for his safety should he be reincarcerated.

In its opinion, the New Mexico Supreme Court conducted an inquiry into the prison conditions of the State of Ohio and determined that inadequate safeguards were present in the Ohio prison system to protect Mr. Reed's constitutional rights. The New Mexico court used this finding to conclude that Mr. Reed fled Ohio under duress

and thus, was not a fugitive from justice subject to extradition to Ohio.

The inquiry conducted by the New Mexico court is an unauthorized expansion in the scope of extradition proceedings in direct contradiction to the long-established mandates of this Court. In *Michigan v. Doran*, 439 U.S. 282, 289 (1978) this Court limited an asylum state court's inquiries in an extradition proceeding to four narrowly defined considerations: (1) whether the person in custody is the same person named in the extradition request, (2) whether that person is a fugitive or otherwise subject to extradition, (3) whether the person named is charged with or convicted of a crime in the demanding state, and (4) whether the extradition documents on their face are in order. *Id.* 439 U.S. at 289. Under the guise of determining the fugitive status of Mr. Reed, the New Mexico court made a direct inquiry into the possible conditions of Mr. Reed's confinement in Ohio.

The determination of fugitive status has historically been limited to a necessary finding only that the accused was present in the demanding state at the time of the alleged crime and had since left that state and found in the asylum state. *Appleyard v. Massachusetts*, 203 U.S. 222 (1906); *Roberts v. Reilly*, 116 U.S. 80 (1885). The only defense to fugitivity is uncontrovertible proof that the accused was not present in the demanding state at the time of the crime. *South Carolina v. Bailey*, 289 U.S. 412 (1933).

Moreover, this Court has expressly stated that the court in an asylum state cannot conduct an inquiry into the prison conditions of the demanding state. In *Pacileo v.*

*Walker*, 449 U.S. 86 (1980), the fugitive from justice fought extradition from California to Arkansas alleging that confinement in the Arkansas prison system would violate his constitutional rights to be free from cruel and unusual punishment. The California Supreme Court, in response to the extradition challenge, had ordered a California trial court to inquire into the conditions of the Arkansas prison system and then decide whether to allow the extradition of the fugitive.

This Court granted summary reversal of the California Supreme Court's decision stating that any issue covering the constitutionality of the demanding state's prison system may only be considered in the demanding state and may not be considered in an extradition proceeding in the asylum state. *Id.* 449 U.S. at 88.

The *Pacileo* decision simply reaffirmed this rule as it had been announced in *Sweeney v. Woodall*, 344 U.S. 86 (1952). In *Sweeney*, as later attempted in *Pacileo*, the fugitive challenged his extradition from Ohio to Alabama claiming that his incarceration in Alabama would violate his constitutional rights. This Court, in a per curiam opinion determined that such questions could not properly be considered in an extradition proceeding in the asylum state:

The scheme of interstate rendition as set forth in both the Constitution and the statutes which Congress has enacted to implement the Constitution, contemplates the prompt return of a fugitive from justice as soon as the state from which he fled demands him; these provisions do not contemplate an appearance by Alabama in



respondent's asylum to defend against claimed abuses of its prison system.

*Id.* 344 U.S. at 89-90 (footnotes omitted).

The New Mexico Supreme Court has attempted to do exactly what this Court has forbidden. The New Mexico Supreme Court has created another exception to the mandatory extradition rule. That exception and its precedent would have an adverse effect on all states seeking return of their fugitives from justice. Any state seeking the return of a fugitive from New Mexico would be adversely affected as it will become simply a matter of alleging "duress" as the reason for fleeing, thereby defeating an extradition attempt. And, while the New Mexico decision is limited to actions in that state, it is not an unreasonable presumption that other states' courts will adopt this exception and even fabricate additional exceptions thereby creating impermissible obstructions to the extradition process.

## II.

### THE NEW MEXICO SUPREME COURT HAS IMPERMISSIBLY RELIED ON A CONFLICTING STATE LAW TO SUPERSEDE FEDERAL LAW IN EXTRADITION PROCEEDINGS IN VIOLATION OF THE EXTRADITION AND SUPREMACY CLAUSES OF THE FEDERAL CONSTITUTION.

In its opinion, the New Mexico Supreme Court relied on its own state law in denying Ohio's extradition request asserting that the state law superseded any federal law. That opinion is clearly contrary to this Court's previous decisions.

This Court has repeatedly held that the provisions of the Extradition Clause and related statutes are mandatory in nature. *Puerto Rico v. Branstad*, 403 U.S. 219 (1987); *Michigan v. Doran*, 439 U.S. 282 (1978).

The Federal Constitution places certain limits on the sovereign powers of a state. Such limitations, including the Extradition Clause, are enforceable by the federal courts. *Puerto Rico v. Branstad*, 403 U.S. 219. "The obvious objective of the Extradition Clause is that no state should become a safe haven for the fugitive from a sister state's criminal justice system." *California v. Supreme Court of California*, 402 U.S. 400, 406 (1987).

The New Mexico court has attempted to place the rights that court deems guaranteed under state law above the dictates of the Federal Constitution and decisions of this Court. Such decision allows the state court to ignore the express intent of the Extradition Clause. To allow the New Mexico court's decision to stand would once again render the integrity of the extradition process reliant on the whims of an asylum state's court or executive official. Inconsistent results of extradition requests, which this Court has decreed unsatisfactory and has diligently tried to eliminate through its decisions, would once again create havoc in the extradition process and defeat the very purpose of the Extradition Clause.

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**CONCLUSION**

The consequences of the lower court's opinion on the extradition process are severe. The amicus Association urges this Court to grant certiorari and reverse the decision of the New Mexico Supreme Court.

Respectfully submitted,

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